



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**

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**PLANNING GROUP OF SCOTTSDALE, LLC AND ALTAIR, LLC. v.  
LAKE MATHEWS MINERAL PROPERTIES, LTD., *et al.***

**CV-10-0189-PR**

**PARTIES:**

*Petitioner:*     The Planning Group and Altair

*Respondent:*   Lake Mathews Mineral Properties, Ltd., *et al.*

**FACTS:**

The question in this case is whether Arizona has specific personal jurisdiction over California defendant Lake Mathews Mineral Properties, Ltd., a California entity, and several related individuals and entities living or acting in California (collectively, “nonresident defendants”). Lake Mathews, LTD, a California entity, owns mining rights to Lake Mathews, a California lake supplying water to Los Angeles. Other nonresident defendants include Holmes, Lake Mathews’s general partner, and Smith, its California counsel. The Planning Group and Altair (collectively, “the Planning Group”) are located in Arizona. They invest in securities and sell insurance.

In 2005, a meeting took place in Arizona between Subke, a retired real estate broker living in Arizona (who happens to be Smith’s brother),<sup>1</sup> and Clark, a Planning Group employee, to discuss the Planning Group’s life insurance. Subke learned the Planning Group invested in outside projects. He got Holmes’s approval to give Lake Mathews’s due diligence report to Clark. Holmes suggested Clark talk to Smith, a lawyer contributing legal services to the venture for a profits percentage. It is undisputed the nonresident defendants did not initiate their introduction to the Planning Group. Subke's involvement ended after that meeting, although Lake Mathews later offered him a reward for introducing Lake Mathews to the Planning Group. During the weeks after the Subke-Clark meeting, Clark, Holmes, and Smith had several phone and email conversations about the Planning Group possibly funding a Lake Mathews mining project. Those communications were initiated by Lake Mathews, Smith, and the Planning Group. Ultimately, Lake Mathews contracted with the Planning Group to fund the project in California.

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<sup>1</sup> Subke is not a party in this court because, after judgment was entered dismissing the complaint against nonresident defendants, the Planning Group and Subke entered into a tolling agreement, and the Planning Group dismissed claims against him without prejudice.

The parties met at the Los Angeles Airport about project funding. In California, Smith prepared a document entitled “Basic Propositions,” which was signed in California but faxed to Arizona. That document provided that the Planning Group would fund the mining project with an initial investment and three more monthly payments, and Lake Mathews would be solely responsible for management but would incur no liability should the project fail.

The Planning Group sent \$100,000 to Lake Mathews in California and about a month later wired another \$90,000 to Lake Mathews. Before the Planning Group's next payment, its Arizona lawyer sent Lake Mathews a “Term Sheet,” which the Planning Group claims formalized the transaction and defined project funding terms. Smith, however, asserted the Term Sheet had new terms varying from the Basic Propositions document, and Lake Mathews would not agree to the Term Sheet. The Planning Group refused to make the final payments. During this period, Smith contacted the Planning Group and its lawyer in Arizona by phone, email, and fax. In December 2005, Lake Mathews and the Planning Group met at the Los Angeles Airport trying to resolve their disputes. Later, Holmes sent a letter to Clark in Arizona outlining alternatives discussed at the airport meeting.

Two years later, the Planning Group filed a complaint against the nonresident defendants and Subke, seeking declaratory relief and requiring defendants to sign 1) a note evidencing the Planning Group's investment; 2) a deed giving the Planning Group royalty interests; and 3) documents memorializing the deal. Seeking restitution, the complaint alleged the nonresident defendants breached a contract, are liable for securities fraud, and should account for use of invested funds and mining operations so the Planning Group can collect royalties and monitor mining operations. The complaint alleged the defendants told the Planning Group they had a joint venture to extract minerals from under Lake Mathews, but after making payments, the Planning Group learned defendants never planned to mine but instead planned to drill wells near the dam, hoping to extort a large condemnation award for defendants' mineral rights or to force Los Angeles into breaching a contract.

The nonresident defendants moved to dismiss for lack of personal jurisdiction, arguing they had insufficient contacts, and only general jurisdiction was alleged. The court let the Planning Group amend the complaint to clarify it alleged specific jurisdiction. After hearing oral argument and considering supportive documents, the court dismissed all claims against nonresident defendants, finding no personal jurisdiction. It entered a final judgment pursuant to Rule 54(b), Ariz.R.Civ.P.

The Planning Group appealed, asserting the nonresident defendants are subject to Arizona's specific personal jurisdiction because they 1) sent materials, made calls, and emailed to Arizona to induce purchases; 2) violated Arizona's security laws; 3) caused injury in Arizona; and 4) created ongoing relationships and obligations with Arizona residents.

In a published opinion, the court of appeals noted the Due Process Clause governs the extent to which an Arizona court may exercise specific personal jurisdiction over nonresident defendants. Courts must determine if defendants' conduct and connection with the forum state are sufficient so

they should reasonably anticipate being haled into court there, a query focusing on relationships between defendants, a forum, and the litigation. Due process for specific personal jurisdiction is satisfied when 1) defendants perform an act or consummate a transaction with Arizona by which they purposefully avail themselves of the privilege of conducting business in Arizona; 2) the claim arises out of or results from defendants' activities related to, or contacts with, Arizona; and 3) the exercise of jurisdiction is reasonable. *Williams v. Lakeview*, 199 Ariz. 1, 3 ¶ 7, 113 P.3d 280, 282 (2000).

The court held Arizona does not have specific personal jurisdiction over the nonresident defendants because their only contacts with Arizona were 1) Subke's delivery of an existing report to the Planning Group, at Subke's suggestion, because he was an Arizona resident and the brother of nonresident defendant Smith; 2) receipt of money sent from Arizona to nonresident defendants; and (3) interstate communications between the parties.

The Planning Group argued its contract claim should be subject to the purposeful availment analysis, and the remaining counts, which sound in tort – the declaratory judgment claim, securities fraud claim, and request for an accounting – should be analyzed under the purposeful direction rubric. The court disagreed because three of the complaint's four counts sound in contract, and when a complaint contains both tort and contract claims, courts look to see which claims predominate, focusing on the substance rather than the form of the complaint's allegations. The court rejected the Planning Group's argument that purposeful availment is established because the nonresident defendants sent materials to the Planning Group in Arizona, had interstate communications with them, and received payments sent from Arizona.

The court noted the Planning Group does not argue that Arizona had personal jurisdiction over any of the nonresident defendants other than Lake Mathews because of their independent contacts with Arizona, but only due to their relationship with Lake Mathews and its alleged Arizona contacts. The court did not address those arguments because it held that Lake Mathew's conduct was insufficient to confer personal jurisdiction over it in Arizona. Op. ¶ 24 n. 11. The court found the terms of the parties' contract and their course of dealing did not create a sufficient connection with Arizona so as to subject the nonresident defendants to an Arizona court's jurisdiction. Op. ¶ 25.

The court rejected the Planning Group's claim that a nonresident selling a security to an Arizona resident is subject to personal jurisdiction in Arizona for claims arising out of that sale. The court did not decide if nonresident defendants sold a security. Op. ¶ 35. The court also held that Subke was not the nonresident defendants' agent. Finally, the court rejected the Planning Group's alternative argument that specific personal jurisdiction is proper because nonresident defendants allegedly caused injury in Arizona. Accordingly, the court affirmed the dismissal for lack of personal jurisdiction.

## ISSUES:

1. Whether personal jurisdiction is examined on a claim-specific basis or *in toto* under the tort or contract test depending on which claims are more numerous.
2. Whether Arizona will follow the federal precedent that a party is not required to physically negotiate a contract in the forum to be subject to jurisdiction here concerning its breach.
3. Whether disputed evidence of jurisdictional facts must be viewed in the light most favorable to the non-moving party.

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